

Liyanage
v.
The Attorney-General

COURT OF APPEAL.
COLIN-THOME, J. AND ATUKORALE, J.
C. A. (S. C.) 9/78—D. C. COLOMBO B/532.
FEBRUARY 27, 1979.

Bribery Act—Charges of solicitation and acceptance—Need for corroboration.

Held

(1) In a trial under the Bribery Act on a charge of solicitation, it is unsafe to allow a conviction to stand solely on the uncorroborated testimony of the complainant.

(2) On the charge of acceptance however the trial judge's findings could stand because the evidence of the complainant had been materially corroborated by another witness.

APPEAL from the District Court, Colombo.

*R. I. Obeysekera, with D. M. S. Gunasekera, for the accused-appellant.
Douglas Halangoda, State Counsel, for the State.*

Cur adv. vult.

April 3, 1979.

ATUKORALE, J.

The accused in this case was indicted on two counts, namely:—

- (1) That on or about March, 1972 at Padiliyatuduwa, you did solicit a gratification of a sum of Rs. 1,000 from one W. D. Agnes Nona as an inducement or a reward for your furthering the securing of a benefit from the Government for the said W. D. Agnes Nona, to wit: an allotment of State Land, and that you are thereby guilty of an offence punishable under section 20 of the Bribery Act.
- (2) That on or about March, 1972 at the place aforesaid in the course of the same transaction, you did accept a gratification of a sum of Rs. 300 from one K. Iranganie as an inducement or a reward for your furthering the securing of a benefit from the Government for the aforesaid W. D. Agnes Nona, to wit, an allotment of State Land, and that you are thereby guilty of an offence punishable under section 20 of the Bribery Act.

After trial he was convicted on both counts and was sentenced by the learned District Judge to a term of 2 years' rigorous imprisonment on each count. He was also ordered to pay a fine of Rs. 500 in default 5 months' rigorous imprisonment on each count and in addition a penalty of Rs. 300 in default 3 months' rigorous imprisonment. The substantive jail sentences were to run concurrently whilst the default sentences were to run consecutively. He has appealed from this conviction.

Learned Counsel for the accused submitted to us that the conviction cannot stand and must be quashed, for the following reasons:

- (a) that the learned trial judge has failed to analyse and evaluate the evidence of the prosecution in the light of the vital contradictions in the evidence of the prosecution witnesses;
- (b) that the evidence of the complainant was in fact uncorroborated although the learned trial judge has treated certain items of evidence as constituting corroboration;

- (c) that the learned trial judge has not brought his mind to bear on the belatedness of the complaint and its effect on the prosecution case.

The prosecution mainly relied on the evidence of 3 witnesses, Agnes Nona (the complainant) her daughter Iranganie and one Gamini. According to Agnes Nona somewhere in March 1972 the accused who was the Grama Sevaka, came to her house in connection with a complaint made by Rolin Nona, the occupant of the adjoining land about the flow of water to her land from the complainant's land. Agnes Nona then told the accused that there are 3 families residing in her allotment of land and that it was not sufficient for all of them and requested the accused to get her another allotment of Crown land. He promised to look into the matter. Several weeks later the accused came to her house and told her that there is a small block of Crown land at Ranimadama and that he will be able to get that block for her but that he could not do it for nothing and that she will have to spend about Rs. 1,000 or Rs. 1,500 as he had to pay money to some departmental officers and for stamp fees and also for his travelling expenses. Agnes Nona told him that she did not have so much of money and that if she had, she could have purchased a block of land and that she was able to give him Rs. 300. He agreed and told her that if she gave the money early he would be able to get the block of land soon. She raised the money in about 3 weeks' time by selling her cow for Rs. 225 and borrowing Rs. 50 from a beedi wrapper. She then one day went with her daughter Iranganie to the office of the accused at about 7.30 or 8 p.m. and met him. At that time witness Gamini was inside the room close to the accused assisting him to write up the ration books and the identity cards. When they were discussing about the transaction Gamini got up from the place where he was seated and went further and sat on the bed. Agnes Nona handed over Rs. 200 to Iranganie and asked her to hand it over to the accused. Iranganie took the money, counted it, went up to the accused and gave it to him. It consisted of a 100 rupee note and two 50 rupee notes. Agnes Nona got Iranganie to give the money to the accused thinking that if she gave it herself she may not get the land as she was an unlucky woman. She said Gamini saw the money being given to the accused. About 10 days later she and her daughter Iranganie again went to the accused's office and there her daughter handed over Rs. 100 to the accused. On that occasion too Gamini was present and he saw the money being given to the accused. Agnes Nona further stated that about 7 or 8 months later she met the accused who told her, "Don't fear. Memker-mahatmaya also signed. Mr. Sooriya-aratchi also signed.

You can get this soon." Member-mahatmaya is the ward member and Sooriya-aratchi is the Member of Parliament. Thereafter since she did not receive any communication from the Government and she did not meet the accused, she went in search of him and learnt that he had been transferred to some other division. She then went to meet Gamini. She told him that the accused took Rs. 300 to get her a Crown allotment from Ranimadama and that she got neither the land nor the money nor is she able to trace the accused. Gamini told her that the accused was at Heiyantuduwa and promised to discuss this matter with the accused. She asked Gamini to some how or other obtain the money for her. Later she went to meet Gamini who told her that the accused agreed to return the money in instalments of Rs. 100. Several weeks later since she did not get any money she again went to meet Gamini who gave her a letter to be given to the accused. She, however, kept the letter with her without giving it to the accused thinking that she would lose the letter also. Thereafter she went again to the accused's office at Heiyantuduwa. When she went there, there were 4 persons who had come to see the accused in connection with a complaint. The accused ask her to be seated for a while. She said she cannot be seated any more and that she had come on several occasions but failed to achieve the purpose for which she came. He again asked her to wait for some time. After those persons left he told her that it is not good to discuss their transactions in the presence of others. Then she told him that she had lost both the money and the land and that a well and a house were being constructed on that land and that he is not doing his duty. The accused told her not to be concerned with wells and houses being built on other people's lands and so saying he took out a knife and kept it on the table. She took a few steps back and told him that it was money that she earned after much suffering and that she has lost the money and the land. Thereupon the accused warned her not to come to his office. Then she told him that she will not come to his office again and boarded a bus to Colombo. She went to the Fort Police Station and informed an officer there who asked her why she delayed so long and took her to the Bribery Commissioner's Office and handed her over there. She then made her complaint to the Bribery Department. Thereafter Gamini came to her house and told her that the accused had given him Rs. 100 to be given to her and requested her to accept it. But she refused in view of the fact that she had already complained to the Bribery Commissioner. Agnes Nona also stated that after investigations into her complaint had been made by the Bribery Commissioner the accused came to her house on a bicycle one

day at night and asked her why she went so far and said "let us settle the transaction entered into by us." He then asked her to collect the money before the Bribery Commissioner. She agreed but did not go. The accused then came to her house the following day. He said that he waited for a long time at the Bribery Department and asked her why she did not come. She then went to the Kadawata Police Station and made a complaint regarding this. The police warned her not to go anywhere at the invitation of any one in respect of this matter. The accused came to her house the next day also, and asked her whether she is not accepting the money. Then she informed him that she complained to the officers of the Bribery Department and that she did not want to discuss about this matter any further with him. The accused did not attempt to give her the money even on that occasion. Then he asked her whether she wants to go to courts without accepting the money. When she replied that what she wants is to get the money back through the officers and not to go to courts. He left saying "go to courts and see". Under cross-examination it was suggested to her that she was giving false evidence as she was angry with him owing to his close association with Rolin Nona and her husband Ebert (the occupants of the adjoining land). She denied this. She also denied that she abused the accused on one occasion saying that she did not received electoral lists.

Witness Iranganie (the daughter of the complainant Agnes Nona) herself gave evidence and stated that one day in March 1972 at about 6.30 p.m. she and her mother went to meet the accused at his office. The accused was in his office with Gamini. She was given some money by her mother to be handed over to the accused. She took the money, counted it and handed over the same to the accused. The amount was Rs. 200. She said Gamini saw the money being given to the accused.

On a later date she went again with her mother to the accused's office. On that occasion too she was given Rs. 100 by her mother to be given to the accused. She counted the money and gave it to the accused. Gamini was present on that occasion too and he saw the money being given to the accused. She said that at the time the money was paid the accused promised to get the allotments of land at Ranimadama. As her mother did not get the land her mother complained to the Bribery Commissioner's Department. Later the accused came to their house and asked her mother why she has gone so far, about this transaction and that if she told him earlier he would have refunded the money. He said that he was asked to and had made a statement to the

Bribery Commissioner. He asked her mother to come to the Bribery Department the following morning to take the money. Her mother did not however go the Bribery Department. The following night the accused came to their house and asked her mother why she did not come to the Bribery Department. Her mother then told him that she has nothing to do with him hereafter and that she does not want the money back. Iranganie further stated that she learnt from her mother that Gamini had come to their house. She also stated that her mother made a complaint to the Kadawata Police. Under cross-examination she stated that at the time she gave the money to the accused he accepted the same saying that if the money is paid soon like this he can get the land soon.

Witness Gamini giving evidence stated that in March 1972 he was assisting the accused in his work. He did not receive any payment from the accused and was helping him as a friend. He was present when Agnes Nona and Iranganie came to the accused's office in March, 1972. When they came he went a little distance away to allow them to speak to the accused. He did not hear what they spoke nor did he see Iranganie giving the accused anything. About a week or two later they came again and he saw money being kept on the table. He does not remember who kept the money but he saw 50 rupee notes. On that occasion too he did not hear what they spoke. Later on he asked Agnes Nona why money was given to the accused. She told him that it was to get an allotment of land. A few months later Agnes Nona met him and told him that she had given Rs. 300 to the accused but that she did not get the land and asked Gamini to get the money back for her. He then went to meet the accused and told him to return the Rs. 300 of "these innocent people.". He promised to return the same in instalments of Rs. 100. Later the accused sent a message to him to come to Heiyantuduwa. When he went there the accused gave him Rs. 100 to be given to Agnes Nona. Gamini came back and offered the money to Agnes Nona but she refused to accept the same. He then returned it to the accused. He said he was not certain as to the time when Agnes Nona and Iranganie came to the accused's office. He could not remember whether it was in the morning or in the evening but it was not at night.

Witness Abeygoonawardene during the course of his evidence stated that the accused was the Grama Sevaka of Padiliyatuduwa from 28.9.1971 to 31.12.1973 and that the accused had no authority to grant any Crown land to any applicant.

At the close of the prosecution case the accused who, except on the first day was undefended was called upon for his defence. He made a statement from the dock. He denied having gone to the house of Agnes Nona in March, 1972 in connection with the discharge of his duties. If he did, it could have been proved by his diaries. He also said that he neither solicited nor accepted any money from Iranganie.

On a consideration of the prosecution evidence it is clear that the evidence of Agnes Nona on the 2nd count of the indictment, namely, the acceptance by the accused of a gratification of a sum of Rs. 300 from Iranganie as an inducement or a reward for furthering the securing to Agnes Nona of an allotment of Crown land, has been materially corroborated by the evidence of Iranganie. Gamini's evidence that he saw money being placed on the accused's table on the second occasion by Iranganie and that later that the accused sent for him and gave him Rs. 100 to be given to Agnes Nona also supports the evidence of both Agnes Nona and Iranganie in respect of the 2nd count. The learned District Judge has accepted their evidence and I think there is ample evidence to support the verdict of the learned District Judge on count 2 of the indictment. The only material contradiction was that whilst Agnes Nona and Iranganie stated that Gamini saw the money being given to the accused at his office Gamini himself stated that he saw money being kept on the table and that too only on the second occasion. This contradiction has escaped the attention of the learned District Judge. But I do not think that in the light of the other evidence in the case it is of such a vital nature as to vitiate the finding of the learned District Judge on count 2. In regard to count 1 however the evidence of Agnes Nona is uncorroborated. The learned District Judge does not seem to have addressed his mind to this fact. I do not think it is safe to allow the conviction on count 1 to stand solely on the uncorroborated testimony of the complainant Agnes Nona particularly in view of the fact that the learned District Judge himself appears to have been reluctant to act on her evidence alone. We therefore quash the conviction and sentence on count 1.

Learned Counsel for the accused also submitted that the learned District Judge has failed to consider the fact that the complaint of Agnes Nona was belated and its impact on the prosecution case. No doubt there seems to have been a lapse of some time before the complaint was made. But the evidence discloses several attempts to get the money back by Agnes Nona both before and after the accused was transferred to Heiyantuduwa. Gamini himself at

her request was attempting to get the accused to refund the money. These attempts no doubt would have taken a fairly long time. The evidence shows that it was only when the accused threatened the complainant Agnes Nona and warned her not to come again to his office at Heiyantuduwa that she lodged her complaint. Under the circumstances and in view of the clear evidence of acceptance by the accused of the money I do not think this submission of learned Counsel has any merit.

For the above reasons we set aside the conviction and sentence of the accused on count 1 and acquit him of that count. We affirm his conviction and sentence on count 2. He will also pay the mandatory penalty of Rs. 300 imposed on him by the learned District Judge.

COLIN-THOME, J.—I agree.

Conviction set aside on count 1.

Affirmed on count 2.

G. G. Ponnambalam (Jnr.)
Attorney-at-law.
